

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

—X—

STEPHEN DRAGO, Individually and as
Acting Chair and President of
"Neighborhoods Against Cell Towers"

08 CIV 6356 (SCR)

Plaintiffs,

- against -

JOHN S. GARMENT, Chairman, and STEPHEN
A. ALLEXANDER, JOHN E. DURANTE,
CASIMIRO V. CIBELLI, ARNOLD BERNSTEIN,
MICHAEL F. QUINN, and JOHN IORIS, as
Members of the Planning Board of the
City of White Plains; THE CITY OF
WHITE PLAINS, New York, and METROPCS
NEW YORK, LLC,

**AFFIDAVIT IN
SUPPORT OF MOTION
TO DISMISS PLAINTIFFS'
COMPLAINT PURSUANT TO
FRCP 12(b) (6)**

Defendants.

—X—

STATE OF NEW YORK)
)
) ss.:
COUNTY OF WESTCHESTER)

Arthur Gutekunst, being duly sworn deposes and says:

1. I am an attorney duly admitted to practice law in the State of New York and am admitted to practice before this court. I am a Senior Assistant Corporation Counsel for the City of White Plains attorneys for defendants' John S. Garment, Chairman, and Stephen A. Alexander, John E. Durante, Casimiro V. Cibelli, Arnold Bernstein, Michael F. Quinn, and John J. Ioris, as Members of the Planning Board of the City of White Plains; the City of White Plains, New York ("the City Defendants").

2. This affidavit is respectfully submitted in support of the motion of the City defendants to dismiss Plaintiffs' complaint pursuant to the Federal Rules of Civil Procedure Rule 12(b)(6) for Plaintiffs' failure to state a claim upon which relief can be granted by this Court.

3. In the interest of judicial economy, a copy of the Complaint at issue is annexed to the affidavit of Brian P. Galligan, sworn to September 5, 2008 as Exhibit A which affidavit has been submitted on behalf of the motion of Defendant MetroPCS New York LLC for the same relief in this action.

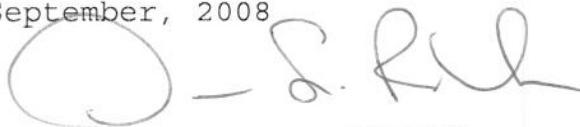
4. Based upon all the reasons set forth in the accompanying memorandum of law in support of the motion of the City Defendants, it is respectfully requested that this court should grant the motion of the City Defendants to dismiss the Plaintiffs' complaint herein in its entirety and for such other and further relief as this Court deems just and appropriate, including but not limited to the City Defendants legal fees, costs and disbursements herein.



Arthur Gutekunst

Sworn to before me this

5th day of September, 2008



DOREEN L. RICH
Notary Public, State of New York
No. 02RI6081196
Qualified in Westchester County
Commission Expires September 30, 2008